



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[Docket No. FWS–R8–ES–2021–0076; FF08ESMF00–FXES11140800000–212]**

### **Permanente Site Operations and Maintenance, Santa Clara County, California; Draft Screening Form and Draft Low-Effect Habitat Conservation Plan**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit application; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of a draft low-effect screening form (screening form) under the National Environmental Policy Act (NEPA) for an incidental take permit (ITP) under the Endangered Species Act (ESA), supported by a draft low-effect habitat conservation plan (draft HCP). The Lehigh Southwest Cement Company (Lehigh) (applicant) has applied for an ITP under the ESA for Permanente Site Operations and Maintenance in Santa Clara County, California. The requested ITP, which would be in effect for a period of 20 years, if granted, would authorize incidental take of the federally threatened California red-legged frog. In accordance with NEPA requirements, we have determined that the proposed action qualifies for a categorical exclusion as low effect. We invite the public and local, State, Tribal, and Federal agencies to comment on the application. Before issuing the requested

permit, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES: *Obtaining Documents:*** The draft screening form, draft HCP, and any comments and other materials that we receive are available for public inspection at <http://www.regulations.gov> in Docket No. FWS–R8–ES–2021–0076.

***Submitting Comments:*** To submit comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft screening form, draft HCP, or both.

- *Internet:* Submit comments at [http:// www.regulations.gov](http://www.regulations.gov) under Docket No. FWS–R8–ES–2021–0076.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0076; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see **Public Comments** and **Public Availability of Comments**, under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Joseph Terry, Senior Fish and Wildlife Biologist, or Ryan Olah, Supervisor, Coast Bay Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, by phone at 916–414–6600 or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft low-effect screening form (screening form), prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. This notice also announces the receipt of an application from the Lehigh Southwest Cement Company (Lehigh) (applicant) for a 20-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of a habitat conservation plan (HCP) with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicant prepared the draft Permanent Site Operations and Maintenance Low-Effect Habitat Conservation Plan (draft HCP) pursuant to section 10(a)(1)(B) of the ESA. The purpose of the screening form is to assess the effects of issuing the permit and implementing the draft HCP on the natural and human environment.

## **Background**

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) prohibits the taking of fish and wildlife species listed as endangered. Pursuant to section 4(d) of the ESA, the take prohibition was extended by regulation to certain threatened species, including the California red-legged frog with the exception of take incidental to routine ranching activities on private or tribal lands as described in 50 CFR 17.43(d). Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal HCP program, go to <http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf>.

## **National Environmental Policy Act Compliance**

The proposed ITP issuance triggers the need for NEPA compliance (42 U.S.C. 4321 *et seq.*). The draft screening form was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action, any alternatives, and associated impacts, and to disclose any irreversible commitments of resources.

### ***Proposed Action Alternative***

Under the Proposed Action Alternative, the Service would issue an ITP to the applicant for a period of 20 years for certain covered activities (described below). The applicant has requested an ITP for one covered species (described below), which is listed as threatened under the ESA.

### ***Habitat Conservation Plan Area***

The geographic scope of the draft HCP encompasses 10.2 acres of the Lehigh property, which includes 2.52 acres subject to repeated temporary impacts and 0.10 acre permanently lost associated with ongoing operations and maintenance activities that occur near suitable habitat for the California red-legged frog, and a pond to which California red-legged frogs that require removal from maintenance areas would be relocated. The area is located west of the City of Cupertino, in an unincorporated area of Santa Clara County, California.

### ***Covered Activities***

The proposed ESA section 10 ITP would allow take of the California red-legged frog from covered activities in the proposed HCP area. The applicant is requesting incidental take authorization for covered activities, including storm water capture/sedimentation basin operation and maintenance; erosion control; material transport and storage; vehicle traffic and equipment operation; road and vegetation maintenance; water quality monitoring; and restoration if emergent cover increases or

decreases enough to substantially diminish breeding habitat quality, maintenance, and monitoring of an on-site California red-legged frog breeding pond. The applicant is proposing to implement a number of best management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the covered activities on the listed species, California red-legged frog, and the candidate species, monarch butterfly.

#### *Covered Species*

The California red-legged frog (*Rana draytonii*), a species federally listed as threatened, is proposed to be included as a covered species in the proposed HCP.

#### *No-Action Alternative*

Under the No-Action Alternative, the Service would not issue an ITP to the applicant, and routine operations and maintenance activities and pond monitoring and maintenance would not be implemented. The No-Action Alternative is not feasible, based on the purpose and need of the operations and maintenance activities. Without the action, Lehigh would not be able to maintain compliance with applicable water quality and erosion control requirements and operational safety standards. Lehigh is mandated by the State Water Resources Control Board to comply with existing and applicable Clean Water Act permits and Water Quality Certifications; full compliance would not be possible if operations and maintenance activities are not conducted. In addition, not implementing these activities would result in erosion and sedimentation that degrade habitat for the California red-legged frog. Finally, without the Covered Activities, safety of on-site material transport and vehicle travel would be jeopardized. For these reasons, the No-Action Alternative has been rejected.

#### *Reduced Project Alternative*

Under the reduced project alternative, the Service would issue an ITP to the applicant for a period of 20 years for the same covered activities and species described for the Proposed Action Alternative, but within a reduced HCP area. The smaller HCP area would presumably result in reduced probability for take of California red-legged frog. However, the HCP area associated with the Proposed Action Alternative has been minimized to the smallest possible footprint to fulfill requirements of the existing storm water pollution prevention plan and applicable permits associated with quarry operation, and to preserve safe quarry operations. In addition, a reduced HCP area would reduce the extent and effectiveness of erosion and sedimentation control measures, potentially resulting in degradation of California red-legged frog habitat. For these reasons, the Reduced Project Alternative would not accomplish the project's goals and has been rejected.

### **Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice, the draft screening form, and the draft HCP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which

are required to be considered in project planning by the National Historic Preservation Act; and

6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

### **Public Availability of Comments**

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Next Steps**

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

**Authority**

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*) and its implementing regulations at 50 CFR 17.32(b)(1) (ii).

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